

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHARON FURROW and)
DAWN HAGEN,) No. 562, 2010
)
Plaintiffs Below,) Court Below: Superior Court
Appellants,) of the State of Delaware in
) and for New Castle
v.)
) C.A. No. 09A-10-005
BOARD OF EDUCATION OF THE)
CHRISTINA SCHOOL DISTRICT)
and CHRISTINA SCHOOL)
DISTRICT,)
)
Defendants Below,)
Appellees.)

Submitted: January 19, 2011

Decided: February 8, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 8th day of February, 2011, it appears to the Court that:

(1) Sharon Furrow and Dawn Hagen appeal from a Superior Court order upholding the decision of the Christina School District Board of Education terminating their positions as full time elementary school counselors. Because there is sufficient record evidence to support the Board's findings that there was a "decrease in education services" and that Furrow and Hagen were not qualified to perform continuing services, we AFFIRM.

(2) Furrow and Hagen were tenured full time elementary school counselors employed by the school district. Their primary responsibilities included providing classroom guidance lessons about subjects like violence prevention, social skills, bullying, self-esteem, feelings, awareness and apathy, test anxiety and relaxation, and character education.¹ Each also provided services including recess and lunch supervision and homeroom duty.²

(3) During the several years preceding Furrow's and Hagen's termination, the school district had been restructuring its counseling services to elementary school students. This restructuring involved a shift toward focused therapeutic counseling services provided by contracted professionals. Under this new structure, contracted counselors would not provide services that had previously been provided by Furrow, Hagen, or either of the other full time counselors in the district.³ Consistent with this restructuring plan, the Board sent letters to Furrow, Hagen, and the other full time counselors informing them of their pending termination at the end of the 2008-2009 school year pursuant to 14 *Del. C.* § 1401

¹ See Appendix to Op. Br. at R-15.

² See *id.* at R-6.

³ *Id.* These discontinued services included cafeteria and homeroom coverage, recess supervision, service on committees, and classroom guidance lessons.

et seq. On June 30, 2009, the Board officially terminated Furrow and Hagen because of a “decrease in education services.”⁴

(4) Furrow and Hagen timely requested a hearing, and a consolidated termination hearing was held on August 26, 2009 before a hearing officer. The school district presented two witnesses: Dr. Sharon Denney, Supervisor of Discipline and School Climate for the school district, and Josette Tucker, Director of Human Resources for the District. Furrow and Hagen testified on their own behalf.

(5) Denney testified that using the contract vendors gave the school district more flexibility to meet the students’ needs because they could provide a greater variety of counselors to meet the “depth and breadth . . . of [students’] counseling needs,” and because they would only be contracted on an as needed basis.⁵ She also testified that the move toward contractual vendor based services was part of a district wide restructuring plan and that the contract professionals,

⁴ 14 *Del. C.* § 1411. Reasons for termination

Termination at the end of the school year shall be for 1 or more of the following reasons: Immorality, misconduct in office, incompetency, disloyalty, neglect of duty, willful and persistent insubordination, a reduction in the number of teachers required as a result of decreased enrollment or a *decrease in education services*. The board shall have power to suspend any teacher pending a hearing if the situation warrants such action.

(emphasis added).

⁵ Appendix to Op. Br. at R-6.

whom the district screens for experience and credentials, would no longer provide classroom guidance services.⁶ She acknowledged that although more clinical and therapeutic counseling services were needed, there was a decreased need for full time counseling services.⁷ She also testified that to the extent the contract counselors would continue to address with students some of the same topics covered in the classroom guidance services, they would do so “at a deeper . . . therapeutic level.”⁸ When asked whether Furrow and Hagen had the same kind of experience and qualifications for clinical and therapeutic counseling as the district required of the contract counselors, Dr. Denney answered, “Not to my knowledge.”⁹ Furrow and Hagen, however, testified that the work described by the vendor services document was comparable to the work they performed as full time counselors.¹⁰

(6) On October 7, 2009, the hearing officer recommended that the Board terminate Furrow and Hagen pursuant to 14 *Del. C.* § 1411. On October 13, 2009, the Board held a hearing at which it adopted the hearing officer’s findings of facts,

⁶ *Id.* at R-5–R-6.

⁷ *See id.* at R-7.

⁸ *Id.* at R-16.

⁹ *Id.* at R-5.

¹⁰ *See id.* at R-13; R-15.

conclusions of law, and recommendation. Then, on October 14, 2009, the Board issued final termination letters to Furrow and Hagen. Furrow and Hagen appealed the Board's decision to the Superior Court on October 23, 2009. On August 6, 2010, the Superior Court affirmed the Board's decision. Furrow and Hagen now argue on appeal that there was insufficient evidence in the record to support the Board's conclusions that there was a decrease in education services and that they were not qualified to offer the continuing services the school district intended to provide to students.

(7) Our review of an appeal from the Board is limited to determining whether substantial evidence exists to support the Board's factual findings.¹¹ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹² Where the Board has not committed legal error or acted arbitrarily, and the Board's factual findings are supported by substantial evidence, a reviewing court must affirm the Board's decision.¹³

¹¹ *Bd. of Sch. Trustees v. O'Brien*, 190 A.2d 23, 25 (Del. 1963).

¹² *Bd. of Educ. v. Shockley*, 155 A.2d 323, 327 (Del. 1959).

¹³ 14 *Del. C.* § 1414. Judicial Review

A decision of the board shall be final and conclusive unless, within 10 days after a copy thereof has been received by the teacher, the teacher appeals to the Superior Court for the county in which the teacher was employed. In case of every such appeal, the cause shall be determined by the Court from the record which shall include a certified copy of the evidence, findings and the decision of the board, without the aid of a jury. The notice of appeal and all other matters regulating the appeal shall be in the form and according to

(8) The Superior Court properly upheld the Board's decision to terminate Furrow and Hagen. The record provides substantial evidence to support the Board's factual finding that there had been a decrease in education services based on the elimination of formal classroom guidance services. Dr. Denney testified that the Board made several policy decisions based on its findings that there was an increased need for clinical and therapeutic mental health counseling. To meet that need, the Board concluded that it was appropriate to provide more clinical and therapeutic counseling services through the use of licensed professionals, and to eliminate classroom guidance services throughout the school district. Even though the subjects covered in classroom guidance services may also be covered in clinical and therapeutic counseling, Furrow's and Hagen's primary job duty was to provide classroom guidance services. Accordingly, there was a "reduction in the number of teachers required as a result of . . . a decrease in education services," because the school district had wholly eliminated formal classroom guidance

the procedure as shall be provided by the Rules of the Superior Court. *The Court shall decide all relevant questions of law and all other matters involved, and shall sustain any board action, findings and conclusions supported by substantial evidence.* The Court may reverse, affirm or modify the decision of the board or remand the cause to the board for a rehearing. In case any cause shall be remanded to the board for a rehearing, the procedure and the rights of all parties to such cause shall be the same as in the case of the original hearing before the board. If the decision is in favor of the teacher, the teacher shall be fully reinstated and shall receive all salary lost as a result of that teacher's temporary dismissal or suspension.

(emphasis added).

services.¹⁴ Given these facts, the Board properly exercised its authority under Section 1411 by terminating Furrow and Hagen.

(9) The record evidence also supports the Board's conclusion that Furrow and Hagen were not qualified to perform the services that the school district intended to offer through the contracted counselors. Dr. Denney's testimony indicated that neither Furrow nor Hagen had the requisite credentials and experience to provide both mental health *and* therapeutic counseling services. Furrow and Hagen failed to rebut this testimony. Although Furrow testified that she had a Master's degree in Social Work and had provided counseling services for twenty-five years,¹⁵ she presented no evidence that she was qualified to perform mental health services or therapeutic counseling. Likewise, although Hagen had provided mental health counseling through her previous employment with Delaware Guidance Services as a private contractor,¹⁶ there is no evidence that Hagen was trained or qualified to perform therapeutic counseling services. Because Furrow and Hagen failed to rebut the school district's evidence that they were not qualified to perform the specialized services now offered through

¹⁴ § 1411.

¹⁵ Appendix to Op. Br. at R-12.

¹⁶ *See id.* at R-14–R-15.

contracted professionals, neither the Superior Court, nor the Board, erred in upholding their terminations.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice